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Attorneys for Defendants
Reckitt Benckiser LLC and RB Health (US) LLC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

THOMAS MATTHEWS, *individually and*
on behalf of all others similarly situated,

Plaintiff,

v.

RECKITT BENCKISER LLC and
RB HEALTH (US) LLC,

Defendants.

Case No. 1:20-cv-00854-NONE-EPG

**DEFENDANTS' MOTION AND NOTICE
OF MOTION TO DISMISS PLAINTIFF'S
AMENDED CLASS ACTION
COMPLAINT**

District Judge: NONE
Hearing Date: NONE
Hearing Location: Courtroom #4, 7th Floor

NOTICE OF MOTION AND MOTION

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that as soon as the matter may be heard in the courtroom of Magistrate Judge Erica P. Grosjean, located in the Robert E. Coyle United States Courthouse at 2500 Tulare Street, Courtroom Four, Seventh Floor, Fresno, CA 93721, Defendants Reckitt Benckiser LLC and RB Health (US) LLC (collectively, “RB Health”) will and hereby do move pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1) to dismiss Plaintiff’s Amended Class Action Complaint (“Am. Compl.”).

This motion is made on the following grounds: Plaintiff Thomas Matthews argues that advertising claims relating to RB Health’s Neuriva brain health supplement are false or misleading because there is insufficient scientific support for them. But California courts have long recognized that private plaintiffs may not demand substantiation for advertising claims; a plaintiff states a claim under California’s consumer protection laws only if he alleges that the advertising is affirmatively false. Plaintiff entirely fails to meet this burden here, and his Amended Complaint should be dismissed.

Separately, many of Plaintiff’s claims are preempted under the Nutrition Labeling and Education Act because they seek to impose standards on RB Health that are inconsistent with federal law. And Plaintiff’s challenge to Clinically Proven claims fails under the reasonable consumer standard because no reasonable consumer would adopt Plaintiff’s idiosyncratic interpretation of this phrase. Finally, Plaintiff’s unjust enrichment claim rises and falls with his statutory claims.

For these reasons, RB Health respectfully requests the Court dismiss Plaintiff’s Amended Complaint in full without leave to amend.

Undersigned counsel for RB Health certifies that the Parties met and conferred with Plaintiff’s counsel regarding the substance of the Motion on October 21, 2020. Counsel discussed the grounds for the motion and the accompanying request for judicial notice. Counsel were unable to resolve the basis of the Motion or request for judicial notice during the meet and confer.

DATED: November 30, 2020

PERKINS COIE LLP

By: /s/ David T. Biderman

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CERTIFICATE OF SERVICE

The undersigned certifies that on November 30, 2020, I caused to be filed via the CM/ECF system true and correct copies of the following documents and that the service of these documents was accompanied on all parties in the case by CM/ECF system.

/s/ David T. Biderman

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